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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA, NORTHERN DIVISION
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19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 COUNTY OF CLARK and NEVADA
23 LINKS, INC,

24 Defendant.
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Case No. 2:17-cv-02303-MMD-PAL

**OPPOSITION TO PLAINTIFF'S
REQUEST FOR JUDICIAL NOTICE**

The Hon. Miranda M. Due

1 Defendant Nevada Links, Inc. (“Nevada Links”) hereby objects to evidence submitted by
 2 Plaintiff United States (“Plaintiff”) in connection with its Opposition the Nevada Links’ Motion to
 3 Dismiss (ECF 25).

4 Under Federal Rule of Evidence 201, a court shall take judicial notice “if a party requests it
 5 and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). A court may
 6 take judicial notice of a fact “not reasonably subject to dispute because it: (1) is generally known
 7 within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from
 8 sources whose accuracy cannot reasonably be questioned.” *Id.* at 201(b). “A court may take
 9 judicial notice of ‘matters of public record’ without converting a motion to dismiss into a motion
 10 for summary judgment, as long as the facts noticed are not subject to reasonable dispute.” *Inti-*
 11 *Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007). However, the court
 12 may not take judicial notice of a fact that is “subject to reasonable dispute.” Fed. R. Evid. 201(b);
 13 *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

14 Plaintiff has asked this Court to take judicial notice of two items:

- 15 1. Clark County Board of Commissioners Agenda Item, Amendment to Lease
 16 Agreement, submitted by Randall H. Walker, Dir. of Aviation (Sep. 6, 2011).
- 17 2. Video recording of the Joint Meeting of the Clark County Board of
 18 Commissioners, et al., (Sep. 6, 2011) (Meeting Video).

19 Because these items are matters of public record, this Court may properly take judicial
 20 notice of the fact that the hearing took place in 2011. However, it “may not take judicial notice of
 21 a fact that is ‘subject to reasonable dispute.’” *Id.* at 690. Plaintiff asks this Court to conclude on
 22 the basis of the proffered video that “Nevada Links possessed actual knowledge of the County’s
 23 legal obligations to the United States and that the Fourth Amendment, if carried out, would violate
 24 those obligations.” Plaintiff’s Opposition to Motion to Dismiss by Defendant Nevada Links, Inc.
 25 (ECF 25) at 13:1-4. In doing so, Plaintiff effectively seeks judicial notice of disputed facts, which
 26 is improper. *See Lee*, 250 F.3d at 689-690 (finding that district court improperly took judicial
 27 notice that a party waived extradition in a public document). Nevada Links disputes that it had
 28 knowledge (actual or constructive) that by entering into the Fourth Amendment the County

1 breached any obligation to the United States. In fact, whether there even was such a breach is a
2 fundamental disputed issue in this case. Thus, this is an improper request for judicial notice, and
3 the Court should not consider the extrinsic evidence, other than to demonstrate the fact that the
4 hearing took place in 2011.

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6 Dated: December 18, 2017

FARELLA BRAUN + MARTEL LLP

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8 By: /s/ Anthony P. Schoenberg
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10 Attorneys for Nevada Links, Inc.
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